

Message Text

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FM SECSTATE WASHDC

TO AMCONSUL MONTREAL IMMEDIATE

C O N F I D E N T I A L STATE 213658

E.O. 11652: GDS

TAGS: PORG, ICAO

SUBJ: ICAO ASSEMBLY - AMENDMENT TO RULE 54

REF: MONTREAL 1511

1. DELEGATION SHOULD CONTINUE TO PROCEED ON THIS QUESTION WITHIN THE FRAMEWORK OF THE INSTRUCTIONS IT HAS, DESPITE COURSE FRENCH DELEGATION TOOK IN REFERRING IT TO LEGAL COMMISSION. WHILE INITIAL CONSIDERATION OF SUBSTANTIVE ASPECTS BY ASSEMBLY NOW APPEARS UNAVOIDABLE, DELEGATION SHOULD CONTINUE TO WORK TOWARD OBJECTIVE OF REFERRING COMPLEX OF SEPARATE PROPOSALS (U.S. PROPOSAL INCLUDED) BACK TO COUNCIL AS SUBJECT FOUND TO BE NOT YET RIPE FOR ACTION BY ASSEMBLY.

2. IN KEEPING WITH THIS OBJECTIVE DELEGATION SHOULD ADVERTISE PROPOSAL IT HAS, AND NOT SUPPORT FRENCH PROPOSAL. TO DO LATTER COULD CONTRIBUTE TO POLARIZATION OF VIEWS IN LEGAL COMMISSION ON SUBSTANTIVE POINT AT ISSUE IN WAY WHICH
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COULD FIND U.S. (AND FRANCE) IN MINORITY AND PRODUCE

RECOMMENDATION TO PLENARY TO ADOPT FORMULATION WHICH WE DO NOT SUPPORT. TO REINFORCE PROSPECTS FOR REFERRAL OF QUESTION BACK TO COUNCIL, WE SEE NO DISADVANTAGE IN HAVING LEGAL COMMISSION BELABORED WITH AS MANY UNRECONCILED ALTERNATIVE PROPOSALS AS INDUCEMENT TO TAKE PROCEDURAL

DECISION OF DEFERRAL TO COUNCIL STUDY. U.S. REPRESENTATIVE IN LEGAL COMMISSION SHOULD PROCEED IN ANY SUBSTANTIVE DISCUSSIONS WITH THIS END IN MIND.

3. FRENCH PROPOSAL CORRECTED TO SUBSTITUTE PHRASE QUOTE QUESTIONS OF SUBSTANCE UNQUOTE WOULD BE ACCEPTABLE TO U.S. FOR REASON EXPLAINED ABOVE, HOWEVER, DELEGATION SHOULD NOT TAKE TACK DELEGATION RECOMMENDED IN REFTEL PARA 4A, UNLESS IT CAN CONCLUDE WITH CONFIDENCE THAT (A) LEGAL COMMISSION CAN BE PERSUADED TO SET ASIDE PROPOSALS BY COUNCIL AND OTHERS AND RECOMMEND PLENARY ADOPTION OF FRENCH PROPOSAL, AND (B) PLENARY WILL SO ADOPT.

4. WITH RESPECT TO RECOMMENDATION 4B, UNLESS DELEGATION CAN PROCEED WITH CONFIDENCE TOWARD ADOPTION BY ASSEMBLY OF CORRECTED FRENCH PROPOSAL, FOR REASON GIVEN PARA 2 ABOVE, DELEGATION SHOULD PROMPTLY ADVERTISE SEPARATE PROPOSAL U.S. HAS TO OFFER.

5. DELEGATION SHOULD NOT JOIN A MAJORITY, AS PROPOSED REFTEL PARA 4C, IN SUPPORT OF PROPOSAL WE OPPOSE. WE DO NOT WISH TO SEE QUESTION RESOLVED IN THIS WAY, AND HAVE NO BASIS IN DELEGATION REPORTING TO JUDGE THIS NEED BE THE OUTCOME. ALTERNATIVE PROPOSALS DEMONSTRATE COUNCIL VERSION NOT REPEAT NOT RIPE FOR ASSEMBLY DECISION, AND DELEGATION SHOULD WORK TO KEEP QUESTION OPEN WHILE PRESSING FOR REFERRAL BACK TO COUNCIL.

6. AS FOR POSSIBILITY UK RAISES THAT FRENCH PROPOSAL MAY HAVE TWO-STAGE INTENTION, IN ABSENCE OF SPECIFIC INFORMATION TO CONTRARY, WE ARE INCLINED TO ACCEPT FRENCH PROPOSAL AT FACE VALUE. WE SEE NO PERSUASIVE TACTICAL REASON WHY, IF THEY INTENDED "SECOND STAGE", THEY WOULD NOT HAVE PROPOSED IT IN THEIR ORIGINAL PROPOSAL. AT ANY RATE, IF

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RAISED, APPLICATION OF FRENCH RULE TO AIR LAW CONFERENCES COULD, IT SEEMS TO US, BE DEFEATED ON TWO GROUNDS (A) IT IS CONTRARY TO BASIC UN RULES FOR DIPLOMATIC CONFERENCE; (B) ACTION BY ASSEMBLY IN ANY EVENT IS IRRELEVANT AS DIPLOMATIC CONFERENCE IS SUPREME AND DECIDES ITS OWN RULES OF PROCEDURE -- THEREFORE ASSEMBLY ACTION HERE IS INAPPROPRIATE.

7. WE VIEW THIS ITEM PRIMARILY AS A STRAIGHTFORWARD MATTER OF TIGHTENING ASSEMBLY RULES OF PROCEDURE. FRENCH AND U.S. PROPOSALS ARE DESIGNED TO CLARIFY AND SIMPLIFY RULES, AND REDUCE POTENTIAL FOR PROCEDURAL WRANGLING. SUPPORT FOR THEM SHOULD BE PRESENTED AS SUCH AND NO MORE. OUR CONCERN IS THAT, TREATED OTHERWISE, THIS ISSUE COULD

BECOME INFLATED IN IMPORTANCE AND POLITICIZED FAR BEYOND ITS SIGNIFICANCE, ESPECIALLY IF SUBJECTED TO EXTENSIVE DISCUSSION. DELEGATION SHOULD STRIVE, THEREFORE, TO HOLD TO MINIMUM SUBSTANTIVE ATTENTION GIVEN TO QUESTION BY LEGAL COMMISSION. OUR CONCERN ON THIS SCORE IS COMPOUNDED BY FACT QUESTION NOW IS BEFORE LAWYERS GROUP WHICH HAS SCANTY AGENDA OTHERWISE BEFORE IT, AND BY FACT THIS GROUP ALREADY HIGHLY SENSITIZED (AS REFTTEL POINTS OUT) BY SPECIAL NATURE OF EXPOSURE TO QUESTION AT ROME AIR SECURITY CONFERENCE.

8. IF DISCUSSION IN LEGAL COMMISSION LEADS DELEGATION TO CONCLUDE THAT NEITHER (A) FRENCH PROPOSAL NOR (B) EFFORT TO KEEP QUESTION OPEN AND REFERRED BACK TO COUNCIL CAN BE ATTAINED, DELEGATION SHOULD REPORT AND REQUEST FURTHER GUIDANCE. KISSINGER

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